BOOK REVIEWS.

LES SANCTIONS DE L'ARBITRAGE INTERNATIONAL. By Jacques Dumas. Paris. 1905.

The organization of war has been a large part of the business of most governments. In the world-politics of the first part of the nineteenth century little else was thought of. The greatest soldier in history had set himself against the world, and the world set itself against him. In the world-politics of the closing years of the same century the dominating position belongs to the Hague Conference of 1899; and a beginning was made towards the governmental organization of peace.

Of the numerous accounts of the proceedings of that Conference, published soon after its adjournment, the best, so far as it went, was that of the late Frederick W. Holls, Secretary of the American delegation, and later a member of the Hague Tribunal by appointment from the King of Siam.[1] His book, however, was properly marked by a certain reserve. The events were too recent to make it judicious to describe precisely the influence exerted by each country or each delegate at the critical points in the progress of the Conference.

That of Dr. Holls himself was thus alluded to, shortly after his death, in the eloquent address by Professor Münsterberg of Harvard, at the memorial services held under the auspices of Columbia University: "Was er für die freundschaftlichen Beziehungen beider Länder vollbracht, durch das, was er angeregt, und vielleicht noch mehr durch das, was er verhindert, wird erst dann deutlich hervortreten, wenn es nicht mehr Politik ist, wenn es Geschichte geworden ist. War es doch auch sein persönlichstes Verdienst, dass Deutschland in entscheidender Stunde den Widerspruch gegen die amerikanischen Vorschläge auf der Haager Konferenz aufgab."

The autobiography of Ambassador White, the chairman of the American delegation, has perhaps anticipated the period to which Professor Münsterberg looked forward. It frankly states the difficulties which at one time seemed to threaten to make the Conference substantially fruitless.

The Emperor of Germany had, in conversation with Mr. White, shown himself disinclined to any cordial adherence to the Russian proposals.[2] The chairman of the German delegation, Count Münster, reflected his views, and had perhaps inspired them. Any such scheme of arbitration as was proposed he did not hesitate to pronounce a "humbug."[3] It was also, he said, opposed to the interests of Germany. Her military establishment was such that she could mobilize her army in ten days. No other power could do this. To give a right to appeal to arbitration would therefore simply give to rival nations time to put themselves in readiness, which Germany did not

[1] For a review of Dr. Holl's book see I COLUMBIA LAW REVIEW, 274.

[2] Autobiography, II, 298. [3] *Ibid.* 297.

need. Professor Zorn, the leading international lawyer on the German delegation, was personally of a different opinion, but on June 9 announced to the sub-committee on arbitration, of which he was one, that he might be compelled to cast his vote against the measure.[1]

At this juncture Mr. White had an important interview with Count Münster, in which he urged upon him that the scheme proposed was for purely voluntary arbitration, with no feature of compulsion, and that the Kaiser would jeopardize his commanding position in world-politics should he oppose what was generally agreed to be a good thing for all nations, because he might deem it a bad thing for his own empire.[2] The next day despatches arrived from Berlin definitely declaring against anything in the nature of an international tribunal. Count Münster mentioned this to Mr. White, and also his intention to send Professor Zorn to ask the Foreign Office to modify the instructions, suggesting at the same time that the American ambassador might well exert his influence in the same direction. Mr. White accordingly wrote on the same day (June 16) a lengthy letter to Baron von Bülow, and sent it off by Dr. Holls as a special messenger, with a personal letter of introduction.[3]

In five days Dr. Holls returned with encouraging news. He had had long interviews with both von Bülow and Prince Hohenlohe, the imperial Chancellor. Bülow had sent Mr. White's letter to the Emperor. The Prince seemed much impressed by its arguments.[4] It was now only the lawyers attached to the foreign office who remained in an unfriendly attitude. Count Münster had all the zeal of a new convert. He said to Holls that day at a dinner-table: "Mit Hohenlohe kann ich auskommen, mit Bülow auch, aber mit diesen verdammten Juristen im Auswärtigen Amt, nicht."[5] Two days later the technical difficulties also were overcome, and the Chancellor sent on instructions to the German delegation to favor the institution of some tribunal to facilitate voluntary arbitration,[6] and assure the Conference that their government "fully recognized the importance and the grandeur of the new institution."[7]

Whether the turning-point was the letter of Mr. White or the personal arguments of Dr. Holls which attended its presentation, is of less moment than the fact that at the most critical moment of the whole proceedings at the Hague, American influence, in some form, was successful in bringing Germany into line.

The final result of the Conference, it will be recollected, was the approval of three Conventions, three Declarations and seven Resolutions. Of these thirteen documents, twelve related to the organization of war, and only one to the organization of peace. It is that one, however, which has really given the Conference a place in the history of the world.

In the preface to the work of Dr. Dumas on the Sanctions of International Arbitration, by Baron d'Estournelles de Constant, he justly says that Europe expected little from that convention. By indifference or calculation, it was ready to let the new-born tribunal of the Hague die of inanition, simply because it would give it nothing to do.

[1] *Ibid.* 294. [2] *Ibid.* 301. [3] *Ibid.* 314. [4] *Ibid.* 318. [5] *Ibid.* 318.
[6] *Ibid.* 321. [7] Holls, The Peace Conference, 247, 257.

It was left to the United States to bring the first case before it, and show by the test of actual trial that the machinery provided was adequate to the task.

No controversy between nations could have been chosen that was better adapted to demonstrate this fact. It was a mere question of pecuniary liability in consequence of a contractual obligation. The claim was a private one, and the United States pressed it simply in the behalf of some of their own citizens. In the decision of the court it was not found necessary, nor therefore thought proper, to inquire whether Mexico came under any liability by virtue of her contract alone. The United States had proved that all the parties in interest had submitted this question for determination by arbitration, many years before, and that the award had been in favor of the claimants. This brought the cause within the scope of the doctrine of *res adjudicata*, and on that sole ground judgment was now pronounced against Mexico.

The creation of the Hague tribunal rests upon the idea of obligations between nations. The convention under which it was constituted expressed this idea more definitely in Article 27. This was proposed by France, and declares that "Les Puissances Signataires considèrent comme un devoir, dans le cas où un conflit aigu menacerait d'éclater entre deux ou plusieurs d'entre elles, de rappeler à celles-ci que la Cour Permanente leur est ouverte." The delegation from the United States thought it prudent to file a declaration saving whatever rights to the contrary might flow from the Monroe doctrine, but heartily accepted the phrase *devoir* as to all other possible applications. Baron d'Estournelles de Constant complains that the insertion of this word passed almost unnoticed at the time, though it was "un mot nouveau, entièrement nouveau dans le langage international."[1] It is certainly one that makes for peace, and the conception which it embodies underlies all forms of the organization of peace. Duty implies a promise to perform whatever is due. Once establish a duty, of one nation to another, and public opinion speaking for public faith will always demand the recognition of this implication.

The object of Dr. Dumas' treatise is to prove that in this way in particular a sufficient sanction is provided for the due execution of all judgments of international tribunals. His special emphasis is on the force attaching to the public opinion of the civilized world. That of the nations that are parties to a controversy cannot always be depended on. There must always be an appeal from Philip drunk to Philip sober,—from the excitement and prejudice of the hour to the calm view of the next generation. It may indeed require centuries to remove national prejudices. Dr. Dumas (p. 136) quotes from a recent paper by M. Kebedgy, an anecdote that well illustrates this. Thiers, after the fall of Napoleon III in 1870, asked Ranke on whom the Germans were making war, since the empire was no more. The reply was "on Louis XIV." But the world at large is more candid and more reasonable. All civilized nations not involved in a particular controversy form a pretty impartial jury to pass upon its merits.

[1] Dumas, Les Sanctions de l'Arbitrage International, ix.

Dr. Dumas finds the true sanction needed to support international tribunals in the universal conscience of civilized man, or the public opinion of the world. Public opinion in England, he says, spoke false during the war of the Transvaal. So did that in the United States as to the causes of the Spanish war. "Mais dans toutes ces circonstances, et dans d'autres encore, l'opinion internationale a-t-elle eu un seul instant d'incertitude ou d'erreur? Il y a eu des divergences de sympathies, mais il bien pensé, elle s'est même bien exprimée. Son tort est de n'avoir pas agi, parce qu'elle n'a pas su agir. Après l'information, après le sens critique, après le jugement doit venir l'action. Nous demandons une opinion qui agisse. Or, l'opinion internationale sera un jour capable d'agir. N'en a-t-on pas eu comme une preuve anticipée au cours de l'affaire Dreyfus, où l'opinion internationale a eu cette surprenante efficacité de faire revenir l'opinion nationale elle-même de ses erreurs et de ses entrainements, et cela par le seul effet d'une persuasion sans violence, par le seul prestige de la vérité mise en pleine lumière.[1]

It will, he adds, be one of the greatest honors of France in the eye of history that she yielded to these international influences. "Ni l'Angleterre, ni les Etats-Unis, dans des circonstances analogues, n'ont su reconquérir de jour au lendemain par un acte de probite politique, l'estime et la confiance de l'univers. La France seule a eu jusqu' ici ce mérite. Guidant le reste du monde, en cela comme en tant de choses, elle a donc l'avantage d'avoir fourni le premier exemple des vertus coercitives de l'opinion internationale. Une autre voix que celle du canon gronde donc dans la monde. Ceci tuera cela."[2]

Dumas does not follow Kant in looking for permanent world-pacification only when all nations have assumed a republican form of government. Conscience is not a thing of Constitutions. International public opinion is not to be infallibly learned from newspapers or from legislative resolves. It must in the future be given form by those best able to voice and proclaim it,—by the moralists, by philosophers, by citizens of the republic of letters.[3] He looks with disfavor on the provision in the project of an arbitration treaty submitted by Mexico at the last Pan-American Congress, in 1901, that a refusal by any nation to perform the award of an international tribunal shall subject it to the censure of other nations, to be manifested by an official declaration signed by as many as will of the powers not concerned in the controversy so decided.[4]

He refers at some length, in proof of his positions, to the settlement of the Luxembourg question.[5] In 1867 Holland sold this grand-duchy to France. Germany, under the influence of Bismarck, protested, and threatened war. The French journal most favorable to Germany, *Le Temps*, was appealed to by the friends of peace to call for expressions of public opinion throughout the world. There were many responses. The International Association of Workingmen published a proclamation, insisting on the necessity of peace for industrial development. Public attention was aroused in all nations. A con-

[1] Ibid. p, 131.. [2] *Ibid.*, 133. [3] *Ibid.*, 139–141. [4] *Ibid.*, 140.
[5] *Ibid.*, 125.

ference of the powers resulted, at which the neutralization of Luxembourg was accomplished, and peace honorably secured.

The Luxembourg and Dreyfus incidents are unquestionable proofs of the new social currents of a moral character which are bearing all nations closer together. The former, in its outcome, was a distinct contribution to the cause of international pacification. But as for the formal organization of peace, the only steps thus far taken have been, first, the institution of the Hague Tribunal, and, second, the vindication of its right to exist by proofs of its working power. These are long steps, and there is good reason to look for a further and definite advance from the second Peace Conference, to be held after the close of the Russo-Japanese war. The initiative of the United States in its convocation is recognized by Dumas in dedicating his volume to President Roosevelt.

THE LAW AND PRACTICE IN BANKRUPTCY UNDER THE NATIONAL BANKRUPTCY ACT OF 1898. By William Miller Collier. Fifth Edition by F. B. Gilbert. Albany, N. Y.: Matthew Bender & Co. 1905. pp. xxlvi, 1098.

The fifth and revised edition of this much edited work is due, we are told in the preface, to the number and importance of the cases in Bankrupcy which had been decided during the two years following the appearance of the fourth edition. Whether the "policy, adopted by the publishers to keep this work in advance of every other work on the subject," will "render imperative a new and revised edition," biennially, we are not told. It is to be hoped that it will not. And it seems fairly certain, that the litigation of the next two years will involve fewer important questions of interpretation, than have called for solution during the last two years; unless the Bankruptcy Act should be radically amended at the coming session of Congress.

Undoubtedly, the usefulness of this book has been much increased by Mr. Gilbert's revision. His changes in the text, and his additions to it, based upon recent decisions, will relieve the practitioner from the necessity of consulting a digest at every point. At times, however, the textual alterations result in a little confusion. For example, on page 69, the present editor has appended to the text of his predecessor this statement: "The entity doctrine permits of the adjudication in bankruptcy of a partnership one of the members of which is insane"; citing the case In Re L Stein & Co. (1904) 11 Am. B. R. 526, 127 Fed. R. 547, which unequivocably announces that doctrine. On page 71, however, the former text is left unamended as follows: "What has been said previously of the effect of insanity on jurisdiction applies with equal force here. If the court cannot adjudge the insane person bankrupt, it cannot adjudge the other entity, *i. e.*, the partnership of which he is a member, bankrupt."

Such inconsistencies, we are bound to add, do not occur frequently, and are never very serious. On the other hand, the care and ability, with which all the cases, involving bankruptcy questions since the amended act of 1903, have been digested, and their holdings incorporated into the text, are worthy of warm commendation. The book, as it now appears, is not only up-to-date, but in every way most serviceable to the profession.